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PORTSMOUTH COTTON OIL REFINING CORP. *v.* RICHARDSON.

March 16, 1916. Rehearing Denied April 3, 1916.

[88 S. E. 317.]

**1. Limitation of Actions (§ 55 (6)\*)—Computation of Period—Accrual of Right—Continuing Injuries.**—While, where a nuisance is permanent, and the injury is direct, immediate, and complete, and must necessarily continue, independently of any subsequent wrongful act, damages must be recovered in a single action, and limitations run from the creation of the nuisance, yet where a business is not a nuisance per se, and if properly conducted could be carried on without injury, successive actions may be brought, and in cases of doubt respecting the permanency of the injuries courts are inclined to favor the right to bring successive actions.

[Ed. Note.—For other cases, see Limitation of Actions, Cent. Dig. § 304; Dec. Dig. § 55 (6).\* 9 Va.-W. Va. Enc. Dig. 393.]

**2. Appeal and Error (§ 1005 (3)\*)—Review—Questions of Fact—Conflicting Evidence.**—The finding of the jury on a plea of limitations on conflicting evidence, approved by the presiding judge, cannot be disturbed on appeal.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3860-3876, 3949; Dec. Dig. § 1005 (3).\* 1 Va.-W. Va. Enc. Dig. 620.]

**3. Waters and Water Courses (§ 77\*)—Damages—Assessment—Pleading and Proof.**—In an action for the pollution of water of a stream which runs over plaintiff's land, special damages, such as loss or diminution of rental value, cannot be proved, unless alleged in the declaration.

[Ed. Note.—For other cases, see Waters and Water Courses, Cent. Dig. §§ 65, 66; Dec. Dig. § 77.\* 13 Va.-W. Va. Enc. Dig. 683.]

Error to Circuit Court, Norfolk County.

Action by George E. Richardson against the Portsmouth Cotton Oil Refining Corporation. Judgment for plaintiff, and defendant brings error. Reversed and remanded for new trial.

*J. W. Willcox* and *Thos. H. Willcox*, both of Norfolk, for plaintiff in error.

*J. Edward Cole*, of Norfolk, for defendant in error.

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.